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**MAILED**

AUG 15 2012

**OFFICE OF PETITIONS**

In re Patent No. 8,175,977 : DECISION ON REQUEST  
Story et al. : FOR  
Issue Date: May 8, 2012 : RECONSIDERATION OF  
Application No. 09/222,336 : PATENT TERM ADJUSTMENT  
Filed: December 28, 1998 :  
Atty Docket No. ADBLE.009A :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed on July 9, 2012,<sup>1</sup> which is being treated as a petition pursuant to 37 C.F.R. § 1.705(d). Patentee requests that the patent term adjustment be corrected from three hundred and seventy (370) days to five hundred and eleven (511) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Application No. 09/222,336 matured into U.S. patent No. 8,175,977 on May 8, 2012, with a patent term adjustment of 370 days.

Patentee has indicated that this patent is not subject to a terminal disclaimer.<sup>2</sup>

Patentees disputes the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of

<sup>1</sup> It is noted that July 8, 2012 fell on a Sunday.

<sup>2</sup> Petition, page 3.

a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 141 days, beginning on July 14, 2003, the date of filing of the notice of appeal and ending on December 1, 2003, the subsequent date of the mailing of a non-final Office action. Thus, B delay is 74 (215 - 141) days, not 215 days.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

As the patent issued with the correct patent term adjustment, a certificate of correction is not required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.



Paul Shanoski  
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Office of Petitions